

### INSTRUCTIONS FOR FORECLOSURES

In order to properly complete the foreclosure sale for this borrower, the following instructions must be complied with:

1. Check to see that the original note is held by USDA prior to any of the following steps. If not in L/O, contact S/O.
2. The Appointment of Substitute Trustee should be recorded prior to sending Notices of Trustee's Sale and publication in the newspaper.
3. If the owner of the property is deceased, have someone in the community that knew the Borrower fill out an Affidavit of Death (RD-MO 3550-15) and have it notarized. The Affidavit will be recorded (preferably with death certificate attached) and included in the file before foreclosure can be approved by the Regional Attorney. You must determine the names and addresses of all heirs. (See 11g.) NOTE: Missouri Revised Statute 443.300 prohibits foreclosure sales within 6 months after death.
4. A search of the real estate records of the county in which the real estate is located should be made within 40 days of the foreclosure sale. Report on Real Estate Lien Search, Form RD-MO 427-4, MUST be in the file in Position 5. You may have a title company, designated attorney or the Recorder complete this search. The search should determine:
  - a. The names and addresses of all parties who have liens and encumbrances of record; and
  - b. The names and addresses of all parties who have filed a Request For Notice of Foreclosure Sale.
  - c. If the search reveals a prior lien or if this is a leveraged loan, pay particular attention to the language required by instruction 8.
5. A search of the records of financing statements in the Recorder's Office should be made within 40 days of the sale to determine the names and addresses of all parties who have filed financing statements on items which are or may become fixtures.
6. A search of the records of the Circuit Court or other Court of record, except Magistrate Courts, of the County should be made within 40 days of the sale to determine the names and addresses of all parties who may have judgment liens against any of the owners of the real estate.

7. A personal inspection of the real estate should be made within ten days of publication of the Notice of Sale to determine:
  - a. If any work has been done which could result in mechanics' or materialsmen's liens and the identity of the possible lienor; and
  - b. The identity of parties in possession.
  - c. The presence of any hazardous waste. You must complete the Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ). Call State Office for guidance if it appears any hazardous waste is present.
8. The Notice of Trustee's Sale should be completed and sufficient copies obtained to comply with instructions 9 through 13. If there are any prior liens, the following language will be included in the Notice: "This property is possibly subject to other liens".
9. If the United States Internal Revenue Service has a tax lien filed against the property, a copy of the Notice of Trustee's Sale must be mailed, certified mail, return receipt requested, to be received by I.R.S. at least 26 days prior to sale along with:
  - a. A copy of each Notice of Federal Tax Lien (Form 668), filed of record, affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:
    - i. The Internal Revenue District named thereon,
    - ii. Name and address of the taxpayer, and
    - iii. The date and place of filing of the notice.
  - b. The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced, and a description of the other expenses (such as legal, selling costs, etc.) which may be charged against sale proceeds.
10. The Notice of Trustee's Sale should be published in a newspaper of general circulation in the county where the real estate is located. The Affidavit of Publication must state that the newspaper is published in the county where the real estate is located. **CHECK THE FIRST PUBLICATION TO MAKE SURE IT AGREES EXACTLY WITH THE NOTICE OF TRUSTEE'S SALE.** Publish as follows:
  - a. If the county does not have a city with a population in excess of 50,000:
    - i. If the newspaper is published weekly, the notice must appear for four successive weeks.
    - ii. If the newspaper is published more frequently, the notice must appear once each week on the same day of the week for four successive weeks.
    - iii. The last insertion must not be more than six days prior to the date of sale.

- b. If the county has a city with a population in excess of 50,000:
    - i. In a daily newspaper for 21 consecutive times.
    - ii. The last publication must be on the date of sale.
  - c. At least 21 days' notice must be given.
11. A copy of the Notice of Trustee's Sale must be sent by Certified Mail, Return Receipt Requested, at least 21 days prior to the sale as follows:
- a. To the grantors of the deed of trust and all subsequent assuming parties, if any, at their last-known address and, if different, at the property address designated in the deed of trust or in a subsequent Notice pursuant to that deed of trust (includes all former owners, even if released from liability);
  - b. To all parties, at their last-known address, shown as owners of the property by the county real estate records during the period from 40 days prior to the sale to the date of sale;
  - c. To parties who have filed a request for notice in the County Recorder's office;
  - d. To parties in possession of the real estate at the address of the real estate and, if different, at their last-known address; and
  - e. To any parties who may have an interest in the real estate as revealed by inspection or examination of the records and real estate as required above.
  - f. To the City and/or County Collector, if the real estate property description appears in the back tax book or on the delinquent land list.
  - g. If present borrower(s) deceased, notices must be sent to them as well as all heirs.
12. The Substitute Trustee must supervise the mailing of the required notices so that he/she can certify to that act. Hand deliver certified letters to the Post Office. Have the white Receipts for Certified Mail (PS Form 3800) postmarked and returned to you at that time. All Return Receipt green cards (PS Form 3811) should be marked with the borrower's name so that identification can be made when the receipt is returned to Rural Development.
13. If a notice is returned unreceipted for any reason, the envelope should be retained unopened in the casefile. If it is returned for any reason other than "addressee unknown" or "no such address," another notice should be sent by regular mail. This action should be done under the supervision of the Substitute Trustee and documented in the case file.

14. USDA should establish the maximum amount of its bid in accordance with HB-1-3550, Paragraph 13.20 F (1) and HB-2-3550 Attachment 6-A. The file should reflect no prior liens except:
  - a. Delinquent taxes and outstanding special assessments, whether paid or unpaid, the sale should be announced as subject to any unpaid taxes and special assessments;
  - b. Liens on personal property which would become or have become fixtures, and upon which a financing statement has been filed, if any.
  - c. For a loan with another lender in first position, the general rule will be to pay off the first lienholder. This is a Non-Contractual item. Complete the Non-Contractual Checklist; check if vendor has been inputted. Send receipt and RHC/OBL Screen with Checklist to Housing Section. If it is decided not to pay off the first lienholder, please call the Rural Housing section for further instructions.
15. The sale must be held as follows:
  - a. At the hour and door of the Courthouse where such sales are usually conducted in the county. This must agree with the time and location stated in Notice of Trustee's Sale.
  - b. The Substitute Trustee must read the Notice of Sale aloud and solicit bids. If there is a prior lien, the Trustee should announce that "it appears that there may be other liens on the property". Do not state that there is or is not a lien. It is the buyer's responsibility to check the records or obtain a title opinion upon which he can rely. The Trustee should continue to offer the property for sale until the bidding ceases.
  - c. The United States should be prepared to bid in accordance with HB-1-3550, Paragraph 13.20 F (2).
  - d. Do not make any statements about clear title to the property.
16. If purchased by USDA, work up specifications for needed repairs and submit to the appropriate contracting officer for bidding and award.
17. If purchased by other than Rural Development:
  - a. A receipt should be given to the purchaser as evidence of the sale until Regional Attorney reviews the foreclosure and a Trustee's Deed is issued. This receipt should reflect the full amount or 10% deposit with balance due in 30 days as applicable.

- b. The proceeds should be submitted to:  
Centralized Servicing Center  
ATTN: Cash Management Section  
P. O. Box 790301  
St. Louis MO 63179

Submit on Form RD 3550-17 under borrower's name and new account number as Reason Code 00, specifically stating to put the money in UNAPPLIED BUCKET 2 coded T.

- c. Provide purchaser's name(s) and address as they are to appear on deed.

18. The Certificate of Mailing (with white certified slips attached on a separate sheet of paper) should be prepared but not signed, notarized, or recorded until reviewed by the Regional Attorney.
19. Return case file with the Certificate of Mailing, and a memorandum on the results of the sale to the Area Office for preparation of the Trustee's Deed, review of the original Affidavit of Publication (from State Office), review of the Certificate of Mailing, and forward to the Regional Attorney for review. This review must include assuring that names and legal descriptions are the same on all foreclosure documents and correspond with deed of trust(s).
20. Recording of Trustee's Deed is recoverable to the borrower even if we have acquired the property. (This is a Non-Contractual expense and is sent to the State Office, Housing Section for payment. Send the Non-Contractual Checklist; RH/OBL Screen and receipt.)